

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Cooper
R-II
31964

FILE: B-218487 DATE: August 16, 1985

MATTER OF: Environmental Aseptic Services
Administration

DIGEST:

In a custodial services contract, use of inspection units that are disparate in size falls within the parameters of a mandatory military standard governing random sampling requiring units to be of the same size, as far as is practicable, when the actual needs of the agency justify such use.

Environmental Aseptic Services Administration (E.A.S.A.) protests that invitation for bids (IFB) No. F29650-84-B-0096, covering custodial services at Kirtland Air Force Base, New Mexico, is defective and should be revised. Specifically, the protester objects to the Air Force's failure to adhere to a mandatory military standard governing inspection by random sampling and to an IFB provision imposing "liquidated damages" for defective performance based on such sampling. The protester did not submit a bid at the April 15, 1985 opening; six other firms did, and the apparent low bidder is Northern Virginia Service Corporation.

We deny the protest.

The IFB incorporates by reference the standard Inspection of Services clause that, under the Federal Acquisition Regulation (FAR), must be included in all fixed price service contracts. See 48 C.F.R. § 46.304 (1984). The clause reserves the government's right to inspect all services, to the extent practicable, at all times during the contract term. It also provides that when defects cannot be corrected by reperformance, the government may reduce the contract price to reflect the reduced value of the services performed. 48 C.F.R. § 52.246-4.

The IFB contains additional inspection provisions under the heading Performance Requirements Summary. These permit the government to use a variety of surveillance methods to evaluate the contractor's performance. At issue

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in this case is random sampling of recurring services (including, for example, vacuuming carpets, removing trash, and cleaning and disinfecting rest rooms), which the IFB states will be done using selected sampling plans of Military Standard (MIL-STD) 105D.

The MIL-STD, entitled "Sampling Procedures and Tables for Inspection by Attributes," April 29, 1963, is mandatory for all Department of Defense agencies, including the Air Force. 48 C.F.R. § 10.006(a)(2). It defines inspection by attributes as examining, testing, or otherwise comparing a "unit" of a product with the requirements for it in order to determine whether performance is defective or nondefective. In other words, it is a pass/fail system of inspection.

Under the random sampling plan applicable to this contract, if one or more defects in a particular service are found in a unit during an inspection, an unsatisfactory is recorded for that service for the entire unit. If the number (or percentage) of units rejected exceeds the acceptable quality level for that service, as determined from MIL-STD tables attached to the IFB, the Performance Requirements Summary states that the government may deduct specified amounts from monthly payments due the contractor. The amount deducted is determined by comparing the value of the particular service for which performance has been unsatisfactory with the total contract value.

The protester in this case does not attack the random sampling plan per se. Rather, it challenges the Air Force's definition of an inspection unit as not in accord with the mandatory MIL-STD, which states that the product to be inspected (here particular custodial services) shall be assembled into lots or batches that "as far as is practicable, consist of units . . . of a single type, grade, class, size, and composition."

The IFB defines an inspection unit as follows:

"2.2.2 Inspection Unit. A building or portion of a building which requires cleaning and constitutes a single inspectable area. The inspection unit size is derived by dividing the total number of square feet covered under the contract by the number of buildings to be cleaned. The computed average square feet per building is approximately 7,432. This figure (7,432) multiplied by 120 percent equals 8,918.

Therefore, any building of 8,918 square feet or less constitutes a single inspection unit. Any building of more than 8,918 square feet shall be divided into parts less than or equal to 7,432 square feet using natural dividing points [floors, stairwells, etc.] and each part shall constitute a single inspection unit." (Emphasis added.)

E.A.S.A. argues that this definition of an inspection unit does not comply with the MIL-STD requirement that units be of the same size, type, and composition, as far as in practicable, since the contract covers approximately 194 buildings whose size for inspection purposes varies from 68 to 8,918 square feet. The protester further asserts that, given this definition of a unit, the contractor may be assessed unreasonable "liquidated damages" and not be given credit for work performed. To illustrate its point, E.A.S.A. presents hypothetical calculations that result in total nonpayment for a particular service where one defect in that service is found in a certain number of small inspection units.

The Air Force acknowledges that the inspection units indeed vary in size. It argues, however, that it was reasonable to calculate an average building size, increase it by 20 percent, and then make this or any building of less than this size an inspection unit. Any other sampling plan, the Air Force contends, would impose administrative burdens on its very small staff, be unduly complex, and increase both the cost to the agency and the risk of error in inspection data.

For example, the Air Force argues, grouping small buildings into units of average size would result in customer dissatisfaction and increased cost, since the cleaning schedule for all buildings in the same inspection unit would have to be uniform, reducing the Air Force's flexibility to vary the frequency of service. Another alternative, reducing the inspection unit size to that of the smallest building, would require extensive surveying and measuring of larger buildings which according to the agency would result in arbitrary and poorly defined inspection unit boundaries. Moreover, the Air Force points out, a contract of this type is not static; buildings are added and deleted monthly. The Air Force maintains that the administrative burden of reconstituting inspection units in a dynamic contract would necessitate additional manpower and increase the risk of error in inspection results. The Air Force also argues that this random

sampling plan, which is used by other Air Force installations, presents less risk to the contractor than one with larger units, since the smaller the inspection unit, the smaller the probability of finding defects.

The Air Force acknowledges that the protester's hypothetical calculations of reductions in payment are accurate. However, it maintains that for zero payment to occur, the contractor would have to have completely failed to perform a particular service, failed to conduct an effective quality control program, and failed to correct obvious deficiencies in the service and the control program after having been advised that such deficiencies existed. The Air Force concludes that, since such a result would occur in only the most extreme case, the proportional reductions would not constitute unreasonable liquidated damages. In this regard, the Air Force asserts that the only provision in the IFB for "liquidated damages" is one which states that \$21 an hour will be assessed the contractor to cover the cost to the government of reinspection of defectively performed services.

We find that the Air Force's definition of an inspection unit falls within the parameters of the MIL-STD governing random sampling. The provision states that the product to be inspected shall be assembled into lots that, "as far as is practicable, consist of units . . . or single . . . size" In our opinion, the Air Force has followed the procedures and tables set forth in that standard. The reasons presented by the Air Force for its choice of inspection unit size show that it was not practicable to make all units the same size. The protester has not shown that the agency's determination was based on grounds other than practicability.

We deny the protest.

Harry R. Van Cleve
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General Counsel